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09/616,426	07/14/2000	Wallace J. Beaudry	8115-12394A-PCT US DIVI	7041
26308	7590	03/09/2004	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			LEWIS, KIM M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/616,426

Applicant(s)

BEAUDRY, WALLACE J.

Examiner

Kim M. Lewis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-25 and 115-117 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 115-117 is/are allowed.
- 6) ☒ Claim(s) 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 17.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Detailed Action.

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 12/15/03 has been received. Claims 1-18 and 26-103 have been canceled, claims 104-114 have been withdrawn, claim 25 has been amended and claims 115-117 have been newly added. At present, claims 19-25 and 115-117 are under review for examination.

### ***Election/Restrictions***

2. This application contains claims 104-114 drawn to an invention nonelected with traverse in Paper No. 15. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over 1,230,445 ("Teed et al.") in view of U.S. Patent No. 5,534,010 ("Peterson").

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As regards claim 19, Teed et al. disclose an epidermal positioning device in the form of a surgical adhesive strip that substantially reads on the instant claim. Specifically, Teed et al. disclose bandage structure (3) having a first end and a second end, a first material (6) coupled to the first end and a second material coupled to the second end, a first anchoring structure coupled to at least a portion of the first material and a second anchoring structure coupled to at least a portion of the second material as shown in Fig. 1.

Teed et al. fail to teach first and second material (6) is elastic material. However, Peterson teaches it is conventional in the art to construct thread/filaments used to drawn the skin near an open wound together for wound closure from elastic material as an obvious design choice (col. 3, lines 29-34).

It would have been obvious to one having ordinary skill in the art to modify Teed et al. by constructing the first and second material from elastic as an obvious choice since Peterson teaches that either elastic or non-elastic material may be used interchangeably to draw opposing sides of an open wound together for wound closure.

As regards claim 20, as can be seen from Fig. 1, the first anchoring structure and the second anchoring structure each comprise an end piece integrally coupled to the respective first and second material. The applicant should note that the anchoring structures have adhesive thereon for application to the skin.

As regards claim 21, Teed et al. disclose that a loose bandage carrying a medicament may be placed over the adhesive strip (page 1, lines 85-97).

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As regards claims 22-25, Teed et al. is silent as to the type of medicinal agent present on the loose bandage and therefore fails to teach the medicinal agent is zinc chromate, zinc chromate impregnated in a hydrocolloid material, alginate, calcium alginate or sodium alginate. However, the examiner contends that the claimed medicinal agents are well known and used in the art. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art to provide the bandage of Teed et al. with medicinal agents in the form of zinc chromate, zinc chromate impregnated in a hydrocolloid material, alginate, calcium alginate or sodium alginate for the purpose of aiding in healing the wound.

***Allowable Subject Matter***

5. Claims 115-117 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 12/15/03 have been fully considered but they are not persuasive.

Applicant argues that neither Teed or Peterson discloses, claims, or suggests the present invention, Tweed is not an epidermal positioning device having a bandage structure, that the examiner has incorrectly characterized the structures present in Teed, that the arrangement of the Teed device is entirely unlike the present claim which includes the features of a positioning mechanism having a bandage structure, a first and second elastic material, and a first and second anchoring structure, and that Peterson

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lacks the unique arrangement of the present claim, insofar as it does not suggest or discloses a mechanism having a bandage structure, a first and second elastic material, and a first and second anchoring structures each respectively coupled to the first and second elastic material, as recited by the present claim, the examiner disagrees.

In response, the examiner wishes the applicant to note that Webster's II New Riverside University Dictionary<sup>1</sup> defines a bandage as a strip of material used to cover and protect an injury. Moreover, the device of Tweed is an epidermal positioning mechanism in that the device positions two sides of a wound adjacent one another. As to applicant's remark that "the sections 3 of the Teed reference are entirely unlike a bandage structure which is to be placed over a wound", the examiner contends that sections 3 are **capable** of being placed over a wound and is therefore a bandage structure. As to the remark that "the aligned section 3 is intended to be cut", it should be noted that the aligned section is intended to be cut in half; however, the other half remains in place on the user. As to Peterson, Peterson was relied upon to teach the use of an elastic material connecting first and second anchoring structures.

Additionally, the applicant should note that even if the modified device of Teed functions differently, the structural limitations are present, therefore the present claims do not define over Teed in view Peterson.

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<sup>1</sup> Note the attached definition of bandage.

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***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Monday to Wednesday from 5:30 am to 4:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Kim M. Lewis**  
**Primary Examiner**  
**Art Unit 3761**

kml  
March 6, 2004



## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 1/14/02 has been received and made of record in the application file wrapper. The specification and claims have been amended as requested.

### ***Claim Objections***

2. Applicant is advised that should claim 118 be found allowable, claim 123 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 26, 104 and 118 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,116,675 ("Nash-Morgan").

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As regards claims 26 and 118, Nash-Morgan discloses all features of the claim including first and third sections (adhesive strips 26), a second elastic section (central elastic sheet 24) and first and second margins (Fig. 3). The applicant should note that although the first, second and third sections are distinct; they are joined together so as to constitute a one-piece construction.

As regards claim 104, (24) is a web of planar material.

5. Claims 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,534,010 ("Peterson"). As regards claim 36, Peterson discloses all features of the claim including first, second and third elastic sections and 1<sup>st</sup> and 2<sup>nd</sup> margins. Note the marked-up front page of the Peterson reference attached hereto. Also note col. 3, lines 56-34. The applicant should note that although the first, second and third sections are distinct; they are joined together so as to constitute a one-piece construction.

6. As regards claims 37-40, note the openings in the second section, which are of a predetermined shape, size, and are spatially oriented (Fig. 1).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 32 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash-Morgan. As regards claim 32, Nash-Morgan substantially discloses all features of the claim except that the first and third sections are laminated materials comprising first, second and third layers. Absent a critical teaching and/or a showing of unexpected results derived from constructing the first and third sections from a laminated material comprising three layers, the examiner contends that the use of such a laminated material for the first and third sections is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 105, Nash-Morgan fails to teach the second section is latex rubber. Absent a critical teaching and/or a showing of unexpected results, the examiner contends that constructing the second section from a web of latex rubber is an obvious design choice, which does not patentably distinguish applicant's invention.

10. Claims 42, 47, 49 and 118-124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson. As regards claim 42, Peterson fails to teach the second section comprises a laminated material comprising three layers. Absent a critical teaching and/or a showing of unexpected results derived from constructing the first and

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third sections from a laminated material comprising three layers, the examiner contends that the use of such a laminated material for the first and third sections is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 47, Peterson is silent as to the transparency of the first and second sections. However, the examiner contends that one having ordinary skill in the art would have found it within the level of ordinary skill in the art to provide the first and third sections (adhesive tape sections 24 and 26) in transparent form since it is well known in the art that adhesive tape is manufactured in transparent form. Such a modification requires limited skill in the art.

As regards claim 49, the second section includes a first side and a second side, of which the second side contacts a wound (Fig. 5).

As regards claim 118, 123 and 124, note the rejection of claims 36 and 42, *supra*.

As regards claims 119-122, note the rejection of claims 37-40 *supra*.

11. Claims 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of U.S. Patent No. 5,234,462 ("Pavletic").

As regards claim 50, Peterson fails to disclose that the second section comprises a medicinal material.

Pavletic, however, discloses a wound closure device having a second section used with or without a dressing for application to a wound site. Although Pavletic fails to teach a medicinal material applied to the wound dressing, one having ordinary skill in

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the art would have been motivated to apply a medicinal material to the dressing in order to treat the wound site. Such a modification requires only routine skill in the art.

In view of Pavletic, it would have been obvious to one having ordinary skill in the art to provide the wound closure device of Peterson with a dressing having a medicinal material applied thereto in order to treat the wound site. Such a dressing would be applied underneath the second section and would therefore be a part of the second section.

As regards claims 52-54, the examiner contends that the use of any medicinal material including zinc chromate impregnated in a hydrocolloid material, calcium alginate or sodium alginate would have been within the skill of the art.

***Allowable Subject Matter***

12. The indicated allowability of claims 36-40, 42,47-50,104 and 105 is withdrawn in view of the newly discovered reference(s) to Nash-Morgan, as well as the new rejections in view of Peterson and Peterson in view of Pavletic. Rejections based on the newly cited reference appear above.

13. Claims 33-35, 44-46, 51-54 and 106-117 are allowed.

14. Claim 48 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

**Kim M. Lewis  
Primary Examiner  
Art Unit 3761**

kml  
August 19, 2003

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendments filed 7/14/00 have been received. The specification has been amended to include the continuing data and claims 1-25 and 55-103 have been canceled.

### ***Drawings***

2. The drawings are objected to because in Figs. 28, 29 and 30 are cross-sectional views; however, the planes upon which the cross-sectional views are taken is not indicated on the view from which the section is cut by a broken line. MPEP 608.02(h)(3). Correction is required.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "10" is not shown in Figs. 2, 3 and 4 as indicated on page 12; "20" is not shown on Fig. 18 as stated on page 18, line 2. The above stated errors are illustrative only and is not an exhaustive list. The applicant is advised to peruse the specification and the drawings for other such inconsistencies. Correction is required.

### ***Specification***

4. The disclosure is objected to because of the following informalities:

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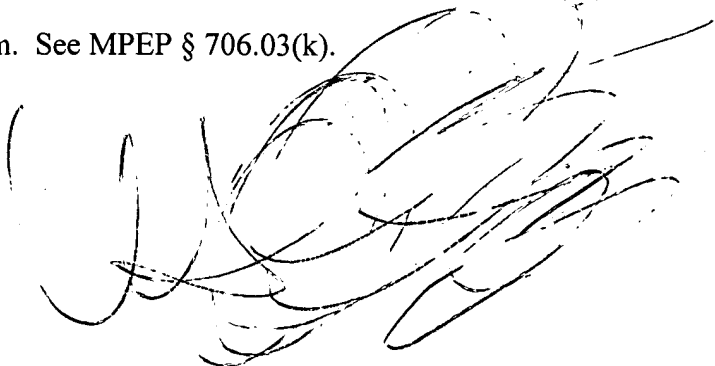
On page 12 of the specification, the applicant provides two descriptions for Fig. 19. The first of which seems to be correct, the second, incorrect. Also, the brief description of Fig. 26 on page 12 incorrectly describes the figure;

On page 18, the applicant describes "64" as "horseshoe shaped cuts", while on page 21, line 21, the applicant refers to "64" as "U shaped incisions". The applicant is advised to remain consistent when designating and/or describing the reference characters;

Additionally, the examiner has noted other such inconsistencies in the specification. For example, on page 24, line 22 the applicant refers to "325" as "central section", while on page 25, line 4, the applicant refers to "325" as "center section". The applicant is advised to once again thoroughly peruse the specification and drawings for other inconsistencies. Appropriate correction is required.

### ***Claim Objections***

Applicant is advised that should claim 37 be found allowable, claim 46 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).





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*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,534,010 ("Peterson").

Regarding claim 26, Peterson discloses a closure device for a skin wound comprising a first section having adhesive on a first side (col. 3, lines 5-6), an elastic second section (col.3, lines 31-34) and a third section having adhesive on a first side (col. 3, lines 6-7), as indicated on the front page of the patent. Further, as can be seen from the front page of the patent, the first section is connected to the second section and the second section is connected to the third section.

Regarding claim 27, as can be seen from the figures, the second section has a plurality of openings.

Regarding claims 28-30, the openings have a predetermined size and shape, and are spatially organized in a predetermined manner respective to each other.

Regarding claim 31, as can be seen from the front page of the patent, the examiner has indicated the first and second margins of the second section, which are integral with the first and second sections, respectively.

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7. Claims 26, 32, 36, 37, 41, 42, 46, 47 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,788,660 ("Resnik").

Regarding claims 26 and 36, Resnik discloses an anchor for surgical dressing comprising a first, second and third elastic sections. The first and third sections having a first side having adhesive thereon, and the first and third sections are each connected to the second section.

Regarding claims 37 and 46, As can be seen from the front page of the patent, the second section has at least one opening.

Regarding claim 41, note the front page of the patent which indicates the margins.

Regarding claims 32 and 42, note the layer shown in Fig. 2 of Resnick.

Regarding claim 47, the openings in the second section are transparent.

Regarding claim 49, the second side of the section is capable of contacting a wound of a user.

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resnick.

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Regarding claims 38-40, Resnick fails to teach the openings are a predetermined size, shape and has a predetermined spatial organization. Instead, Resnick provides the user with the option of determining the size, shape and spatial organization of the opening such that the device can be tailored to the individual use. Absent a critical teaching of such predeterminants, the examiner contends that the predeterminants would have been an obvious design choice which does not patentably distinguish applicant's invention.

10. Claims 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resnick.

Regarding claims 50-54, the device of Resnick is for securing a dressing to a user. As such, when in use, the second section of the device could comprise the dressing. Although Resnick is silent as to medicaments being used on the dressing to treat the wound, the examiner contends that the addition of medicaments to wound dressings is well known in the art, and that the type of medicament used (*i.e.*, zinc chromate calcium alginate or sodium alginate) does not patentably define applicant's invention since the disclosed medicaments are well known and used in the art.

***Allowable Subject Matter***

11. Claims 33-35 and 43-45 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (703) 308-1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703) 308-2702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

kml  
October 20, 2000